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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re: National Phase of PCT/FR99/03164
Applicants: Didier BEUDON et al.
Title: DEVICE FOR DIFFUSING STERILE
AIR IN A FABRIC SHEATH
Appl. No.: 09/868,315
IA Filing Date: 12/16/1999
Examiner: Unassigned
Art Unit: Unassigned

RECEIVED

FEB 06 2004

OFFICE OF PETITIONS

**PETITION UNDER 37 C.F.R. § 1.181(a) REQUESTING
WITHDRAWAL OF HOLDING OF ABANDONMENT**

Attn: PCT Legal Administrator
Mail Stop PCT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

On December 8, 2003, Applicants' representative received a Notification of Abandonment dated December 4, 2003. According to the Notification, the application was abandoned for failing to respond to the Notification of Missing Requirements mailed August 1, 2001. Applicants, however, submit evidence and explanation showing that they responded to the Notification of Missing Requirements (Form PCT/DO/EO/905) dated August 1, 2001. Therefore, the captioned application should not be regarded as abandoned, and contingent upon the petition to withdraw the holding of abandonment not being granted, Applicants Petition to Revive under 37 CFR § 1.137(b).

Events

1. Applicants' representative received on August 2, 2001, a Notification of Missing Requirements (Form PCT/DO/EO/905) dated August 1, 2001. (Exhibit 1) The

Notification of Missing Requirements stated in Item 3 that in order to comply with 35 U.S.C. § 371, the following items were required to be furnished: (1) a declaration by the inventors in compliance with 37 C.F.R. § 1.497(a) and (b) and (2) a surcharge under 37 C.F.R. § 1.492(e) for providing the declaration 30 months after the priority date. Under Item 5, Applicants were given two months to respond to the Notification of Missing Requirements

2. In a *bona fide* response dated August 29, 2001, i.e., before the end of the two month deadline, Applicants submitted to the PTO: (1) a declaration by the inventors in compliance with 37 C.F.R. § 1.497(a) and (b) (Exhibit 2) and (2) check no. 14612 for \$130, the surcharge under 37 C.F.R. § 1.492(e) (Exhibit 3). Also enclosed were (3) a Transmittal Letter to the U.S. Designated/Elected Office (Form PTO-1390), which included an authorization for the Commissioner to charge any additional fees to Deposit Account No. 19-0741 (Exhibit 4) and (4) an Associate Power of Attorney. (Exhibit 5) Copies of these documents (Exhibits 2-5) and the date stamped itemized postcard (Exhibit 6) are attached as proof that the itemized papers were filed August 29, 2001.

3. The Patent Office mailed a Notification of Abandonment dated December 4, 2003, advising Applicants that the present application is considered abandoned for failing to respond to the Notification of Missing Requirements within the time period set therein.

Action Requested

A. Petition to Withdraw a Holding of Abandonment Under Rule 181 (a)

The Notification of Abandonment concluded that the application is abandoned for failure to respond to the notification of Missing Requirements (Exhibit 1) mailed August 1, 2001. Yet a timely response to the Missing Requirements was filed August 29, 2001. Moreover, this response should be part of the record.

Exhibit 6 is a properly itemized postcard containing the "Office Date" stamp. An "Office Date" stamped postcard, like Exhibit 6, is *prima facie* evidence that the PTO received each of the postcard's listed items. Cf. MPEP § 503. In this case, the listed items include, as relevant to this petition, the "Declaration and Power of Attorney (2 pgs.)." Cf. Exhibit 2. Since Exhibit 6 is a postcard both listing the "Declaration and Power of Attorney (2 pgs.)" and having an "Office Date" stamp of August 29, 2001, Exhibit 6 is *prima facie* proof that the

"Declaration and Power of Attorney (2 pgs.)" was filed August 29, 2001. Thus, these papers (Exhibits 2-6), a copy of each being attached to this petition, should be considered part of the present application and filed August 29, 2001.

For sure, August 29, 2001, when the responsive declaration (Exhibit 2) was filed, is before the October 1, 2001, deadline of the Missing Requirements. Furthermore, it is believed that the declaration (Exhibit 2) satisfies 37 CFR § 1.497(a)-(b), which also means the declaration complies with 35 USC § 371(c)(4).

As a result, since the requirements of Rule 497(a)-(b) have been met, Applicants respectfully request an indication that the formalities of 35 USC § 371 have been satisfied and that this application should have the present holding of abandonment withdrawn.

B. Contingent Petition to Revive an Abandoned Application Under 37 CFR § 1.137(b).

This petition is contingent upon not granting the petition of the previous section. Applicants hereby petition for revival of this application.

Petitions under 37 CFR § 1.137(b) are proper to address failure to timely reply to an Office requirement in an application. As the present application was abandoned for failing to respond to the second Notification, the present contingent petition is proper under 37 CFR § 1.137(b).

Petitions under 37 CFR § 1.137(b) require:

- (1) the required reply, unless previously filed;
- (2) the petition fee as set forth in 37 CFR § 1.17(m);
- (3) any terminal disclaimer required pursuant to 37 CFR § 1.137(d); and
- (4) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR § 1.137(b) was unintentional.

Item (1) is in the present petition and its exhibits. Item (2) is an authorization to charge the deposit account no. 19-0741. Item (3) is believed unnecessary.

Item (4) is this STATEMENT: The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR § 1.137(b) was unintentional. Additional information will be provided upon request.

In view of the above petition, it is submitted that proper recourse would be to grant, if necessary, the petition under 37 CFR § 1.137(b). As a result, the present application would be revived.

CONCLUSION


The present application either should have the holding of abandonment withdrawn or should be revived.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Respectfully submitted,

Date February 4, 2004

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